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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**SECOND APPEAL NO.188 OF 2016
WITH
CIVIL APPLICATION NO.341 OF 2016
IN
SECOND APPEAL NO.188 OF 2016**

Vimlabai Mogal Pagare ... Appellant.

V/s.

Shantabai Kundlik Salve and ors ... Respondents

Mr. Swapnil V. Walve, for appellant.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J

DATE : 2nd JULY, 2018.

P.C. :

1] Heard learned counsel for the appellant.

2] This appeal is directed against the judgment and decree dated 6.7.2015, passed by the District Judge 9 Nashik in Civil Appeal No.2011, preferred against the judgment and decree dated 29.04.2011, passed by the 2nd Civil Judge Junior Division, Nashik in Regular Civil Suit No.399 of 2006.

3] The said suit was filed by the present appellant seeking specific performance of the agreement dated 13.6.1997. The said

agreement was executed for an amount of Rs.12,000/-. As per case of the appellant, she was given possession of the suit land on the date of agreement itself. However, as the permission of the Collector was required for the execution of the sale deed, sale deed could not be executed earlier. The said permission was received from the Collector, in the year 2006. Immediately thereafter the appellant issued notice to respondent Nos 1 to 3. Respondent No.3 accepted the notice, but did not execute the sale deed. Hence she was constrained to file suit for specific performance of the agreement.

4] The suit was resisted by respondent Nos. 1 & 3 inter alia contending that the market price of the suit land was Rs.60,000/-. However, by cheating the respondents, consideration of Rs.12,000/- only was agreed. Therefore the agreement is bogus and it is not binding on the respondents.

5] Respondent No.4 also contended that the suit land being ancestral property, he is entitled to purchase the same by way of preferential right. He has also filed Counter Claim to that effect.

7] In support of her case, appellant examined herself; whereas respondent No.4 has examined himself.

8] On the basis of this evidence, the trial Court was pleased to hold that the appellant has failed to prove the execution of the agreement and to show her readiness and willingness to perform her part of contract. Hence the trial Court dismissed the suit. The trial Court also dismissed the Counter Claim of respondent No.4 on the count that under Section 22 of the Hindu Succession Act, he is not entitled to purchase the suit land by way of preferential right.

9] The appellant has challenged this judgment of the trial Court, before the first Appellate Court; whereas respondent No.4, did not challenge the same and hence finding as to his Counter Claim remained unchallenged on record and it was confirmed by the first Appellate Court.

10] As regards, the appellant, it was held by the Appellate Court that as the execution of agreement is proved, the appellant is entitled to refund of an amount of Rs.12,000/-, which was paid as earnest amount, with interest at the rate of 6% per annum. The Appellate Court further held that the appellant has proved readiness and willingness to perform her part of the contract. However, as regards, the decree of specific performance of the contract was concerned, the Appellant Court has rejected the same on three grounds.

11] In the first place, it was held that the market price of the

suit land at the time of agreement was Rs.60,000/-; whereas agreement was executed only for Rs.12,000/-.

12] The second ground was that the appellant has not come before the Court with clean hands. In her plaint she stated that she was put in possession of the suit land on the basis of the agreement. However, in the evidence before the Court, she has to admit that she is not in possession thereof. Thirdly, the execution of the sale deed was subject to permission from the Collector. Such permission was given in the year 2006 itself on imposing condition that sale deed was to be executed within three months, but it was not executed. The Appellate Court found that there is breach of the condition imposed by the Collector. Now the appellant may not get such permission from the Collector to execute sale deed.

13] Thus, there is concurrent finding of fact recorded by the trial Court and the Appellate Court, that the appellant is not entitled to get discretionary relief of specific performance of the contract and the reasons given by the Appellate Court for refusing such relief are required to be held as sound one. The appellant has not come with clean hands, in respect of aspect of possession. Moreover, both the reasons given by the Appellate Court in respect of consideration amount and the sale deed was to be executed as per the condition imposed by Collector, within three months, are justified.

14] In view of above, the Second Appeal holds no substantial question of law. Hence the same is dismissed.

15] In view of dismissal of appeal, Civil Application No.341 of 2016 becomes infructuous and same is disposed off.

[DR.SHALINI PHANSALKAR-JOSHI, J.]